Malayan Commercial Banks Association & Anor v Association of Bank Officers, Peninsular Malaysia & Anor

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO W-04-2-95
NH CHAN JCA, KC VOHRAH AND MOHD NOOR AHMAD JJ
23 AUGUST 1995

Labour law *— Employment — Employees — Bank employees — Whether could be required to work on rest day — Employment Act 1955 s 60A(2)(f) — Industrial Relations Act 1967 s 2*

Words and Phrases *— 'Essential service' — Industrial Relations Act 1967 s 2*

This appeal involved only one question of law, ie whether a bank employee could be required by his employer to work on a rest day, under the Employment Act 1955.

Held, allowing the appeal:

(1) Under s 60A(2)(f) of the Employment Act 1955, an employee may be required to work on a rest day where there is work to be performed by him in any 'essential service' as defined in the Industrial Relations Act 1967 (see p 175I–176A).

(2) Pursuant to s 2 of the Industrial Relations Act 1967, 'essential service' is defined as 'any service specified in the Schedule'. In the Schedule, banking services are one of the essential services specified (see p 176).

(3) As the work to be performed by a bank employee is an essential service as defined in the Industrial Relations Act 1967, it is plain that under s 60A(2)(f) of the Employment Act 1955, a bank employee can be required by his employer to work on a rest day (see p 177B).

[Bahasa Malaysia summary

Rayuan ini hanya melibatkan satu soalan undang-undang, iaitu sama ada seorang pekerja di bank boleh dikehendaki oleh majikannya untuk berkerja pada hari rehat, di bawah Akta Pekerjaan 1955.

Diputuskan, membenarkan rayuan itu:

(1) Di bawah s 60A(2)(f) Akta Pekerjaan 1955, seorang pekerja boleh dikehendaki untuk bekerja pada hari rehat jika terdapat kerja yang harus dibuat olehnya dalam sebarang 'perkhidmatan penting' seperti yang ditakrifkan dalam Akta Perhubungan Industri 1967 (lihat ms 175I–176A).

(2) Menurut s 2 Akta Perhubungan Industri 1967, 'perkhidmatan penting' telah ditakrifkan sebagai 'sebarang perkhidmatan yang

dinyatakan dalam Senarai'. Dalam Senarai tersebut, perkhidmatan bank merupakan satu daripada perkhidmatan penting yang telah dinyatakan (lihat ms 176).

(3) Oleh kerana kerja yang harus dibuat oleh seorang pekerja bank ialah suatu perkhidmatan penting sebagaimana yang telah ditakrifkan oleh Akta Perhubungan Industri 1967, adalah jelas bahawa di bawah s 60A(2)(f) Akta Pekerjaan 1955, seseorang pekerja bank boleh diperlukan oleh majikannya untuk bekerja pada hari rehat (lihat ms 177B).]

[*Editorial Note*: The respondents have applied for leave to appeal to the Federal Court vide Civil Application No 08–65–95.]

Notes

For cases on labour law, see 8 *Mallal's Digest* (4th Ed) paras 428–883, [1989] Mallal's Digest 936–969, [1991] Mallal's Digest 1267–1315, [1992] Mallal's Digest 1138–1174, [1993] Mallal's Digest 911–937, [1994] Mallal's Digest 1504–1521.

Legislation referred to

Employment Act 1955 s 60A(2)(f)
Industrial Relations Act 1967 s 2

Appeal from: Originating Motion No R2–25–65–93 (High Court, Kuala Lumpur)

Andrew Saw (Mazlinda Makhzan with him) (*Ng Yook Woon, Andrew TC Saw & Co*) for the appellants.
Anand Ponnudurai (Lobo & Associates) for the respondents.

Cur Adv Vult

Dato' NH Chan J (delivering the judgment of the court): This appeal involves only one question of law. It is this, whether a bank employee could be required by his employer to work on a rest day. Section 60A (2)(f) of the Employment Act 1955 reads as follows:

> (2) *An employee may be required by his employer* to exceed the limit of hours prescribed in subsection (1) and *to work on a rest day*, in the case of–
>
> ...
>
> (f) *work to be performed by employees in* any industrial undertaking essential to the economy of Malaysia or *any essential service as defined in the Industrial Relations Act 1967*:
>
> ...
>
> (We have supplied the emphasis.)

It is plain under the above provision that an employee may be required to work on a rest day where there is work to be performed by him in any

essential service as defined in the Industrial Relations Act 1967. Section 2 of the Industrial Relations Act 1967 gives the definition of 'essential service'. It says:

> 2 In this Act, unless the context otherwise requires–
>
> 'essential service' means any service specified in the Schedule;

In the schedule, 'banking services' are one of the essential services specified, thus:

> Schedule
> Essential Services
> (Section 2)
>
> 1 Banking services (emphasis supplied).
> 2 Electricity services.
> 3 Fire services.
> 4 Port, dock, harbour and airport services and undertakings, including stevedoring, lighterage, cargo handling, pilotage and storing or bulking of commodities.
> 5 Postal services.
> 6 Prison services.
> 7 Production, refining, storage, supply and distribution of fuel and lubricants.
> 8 Public health services.
> 9 Radio communication services, including broadcasting and television services.
> 10 Telegraph, telephone and telecommunication services.
> 11 Transport services by land, water or air.
> 12 Water services.
> 13 Any service provided by any of the following Departments of Government.
>
> (i) Chemistry.
> (ii) Civil Aviation.
> (iii) Customs and Excise.
> (iv) Immigration.
> (v) Marine.
> (vi) Meteorology.
> (vii) Printing.
>
> 14 Services which are connected with, or related to, or which assist towards, the maintenance and functioning of the armed forces and the Royal Malaysian Police Force.
>
> 15 Business and industries which are connected with the defence and security of Malaysia.
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> 16 Any section of any service, on the working of which the safety of the employees therein or of the establishment relating thereto depends.

A 17 Industries declared by the Minister by notification in the *Gazette* as industries essential to the economy of Malaysia."

We have allowed the appeal at it is quite plain to us that under s 60A (2)(f) of the Employment Act 1955, a bank employee can be required by his employer to work on a rest day. This is because the work to be performed B by a bank employee is an essential service as defined in the Industrial Relations Act 1967.

Order accordingly.

Reported by Isabel Liong

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